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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,608	01/20/2004	John M. Lown	FL02-N61	9954

7590 07/11/2006

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Tustin, CA 92780

EXAMINER

LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/760,608

Applicant(s)

LOWN, JOHN M.

Examiner

Eugene Lhymn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/20/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species:

- a. Fig. 10
- b. Fig. 15

The species are independent or distinct because they are mutually exclusive embodiments.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

2. During a telephone conversation with Harold Jackson on 4/17/06 a provisional election was made without traverse to prosecute the invention of Fig. 10, claims 1-16. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 3, 4, 7, 8, 9, 10, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfseder (US 4619363) in view of Riley (US 2004/0144670 A1) and Taylor (US 4871217). With respect to claims 1 & 16, Wolfseder discloses the following:

- A bottom and longitudinal and transverse perimeter walls terminating in an upper rim defining an opening through which articles may be placed in and removed from the tray, the rim of each tray having the same dimensions regardless of the height of the tray; a latch hook protruding outwardly from each transverse wall;
- A latch handle having a locking tab arranged to engage the associated latch hook of an above positioned tray when the latch handle is rotated to a closed position.

However, Wolfseder fails to disclose

- An axle spaced outwardly from each transverse wall to accommodate a rotatable latch handle mounted thereon
- A latch handle rotatably mounted on each axle
- The perimeter walls being inclined outwardly

Nonetheless, Riley teaches a system of stackable containers wherein the latching mechanism is attached to an axle spaced outwardly from each transverse wall to accommodate a rotatable latch handle mounted thereon, thereby providing an alternate configuration attachment (Fig. 3). Moreover, Taylor teaches a container being tapered outwardly (Fig. 2), which increases container strength. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the latching means 28a with an axle that interfaces with the latch handle of Wolfseder as taught by Riley so as to provide an alternate latching securement means, in addition to configuring the container of Wolfseder to be tapered as taught by Taylor so as to increase container strength.

With respect to claim 2, Riley teaches an inwardly stepped section joined to the bottom of each container, thereby providing a mating interface between adjacent stacked containers (Fig. 3, item 10d).

With respect to claim 3, Wolfseder discloses the transverse walls having a recessed center section where the axles and latch hooks are positioned (Fig. 5).

With respect to claim 4, Riley teaches each latch handle 26 terminating in an inverted j-hook (opposite end of 266) that engages the axle and terminates in opposite end in an finger-engaging surface 266.

With respect to claim 7, Wolfseder discloses the distance between the latch hooks and axles being the same (Fig. 5).

With respect to claim 8, Wolfseder discloses a cover having longitudinal and transverse perimeter sections, said transverse sections having a recessed center portion with a protruding latch hook (Fig. 2, recessed center portion), and the perimeter defining an overcut portion adjacent the bottom thereof with a horizontally oriented shelf arranged to engage the rim of an underlying tray, as shown in Fig. 3.

With respect to claim 9, Wolfseder discloses the cover having an overhanging vertically oriented skirt arranged to extend over the outside of the upper portion of an underlying tray (Fig. 3, the lower inner, vertically oriented flange).

3. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfseder in view of Riley and Taylor as applied to claim 1 above, and further in view of May (US 4517231). With respect to claims 5 & 6, Wolfseder as modified above discloses the claimed invention except for the container having a plurality of divider-receiving guides, wherein each guide is semicylindrical. Nonetheless, May teaches a container having a plurality of divider-receiving guides, wherein each guide is semicylindrical, as shown in Fig. 1, thereby providing a convenient means of partitioning

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the container of Wolfseder. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add divider guides to the container sidewalls of Wolfseder as taught by May so as to provide a convenient means of partitioning the container.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfseder in view of Riley and Taylor as applied to claim 1 above, and further in view of Gash (US 2440541). With respect to claim 10, Wolfseder as modified above discloses the claimed invention except for the handle being rotatable, but does disclose that the handle can be interfaced in any suitable manner (Col 3, Lines 25-28). Nonetheless, Gash teaches a container having a handle that rotates, thereby providing a suitable interface. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the handle of Wolfseder to be rotatable as taught by Gash so as to provide a suitable container-handle interface.

5. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfseder in view of Riley and Le Grand (US 4372444). With respect to claim 11, Wolfseder fails to disclose:

- An axle spaced outwardly from each transverse wall to accommodate a rotatable latch handle mounted thereon
- A latch handle rotatably mounted on each axle
- The perimeter walls being inclined outwardly

- Plurality of dividers

Nonetheless, Riley teaches a system of stackable containers wherein the latching mechanism is attached to an axle spaced outwardly from each transverse wall to accommodate a rotatable latch handle mounted thereon, thereby providing an alternate configuration attachment (Fig. 3). Moreover, Le Grand teaches a container being tapered outwardly (Fig. 2), which increases container strength. Also, Le Grand teaches a plurality of dividers disposed inside the container, so as to provide multiple compartments to improve storage. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the latching means 28a with an axle that interfaces with the latch handle of Wolfseder as taught by Riley so as to provide an alternate latching securement means, in addition to configuring the container of Wolfseder to be tapered and to contain a plurality of dividers as taught by Le Grand so as to increase container strength and improve storage capabilities.

With respect to claim 12, Wolfseder as modified above discloses the claimed invention except for the angle of taper being between .5 and 2 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the taper as such, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 13, Wolfseder discloses the peripheral walls having an inwardly stepped section accommodating the rim of another container (Fig. 5).

With respect to claim 14, Wolfseder discloses each latch handle having a groove at an end, and a finger-engaging surface at the other end (Fig. 5).

With respect to claim 15, Wolfseder, as modified above by Riley and Le Grand, discloses each transverse wall having an inwardly stepped center section with an axle extending across the center section adjacent the upper edge and the latch hook adjacent the bottom (Fig. 5 & Fig. 3).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen Castellano
Primary Examiner